S. HRG. 99-853

ADMINISTRATION OF JUSTICE WITHIN THE SALT RIVER PIMA-MARICOPA INDIAN RESERVATION

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2564

TO PROVIDE FOR THE PROPER ADMINISTRATION OF JUSTICE WITHIN THE SALT RIVER PIMA-MARICOPA INDIAN RESERVATION BY GRANTING JURISDICITON TO THE SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT OVER CERTAIN CRIMINAL MISDEMEANOR OFFENSES

JULY 23, 1986
WASHINGTON, DC

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ADMINISTRATION OF JUSTICE WITHIN THE SALT RIVER PIMA-MARICOPA INDIAN RESERVATION

WEDNESDAY, JULY 23, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:15 a.m., in room 385, Russell Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

The CHAIRMAN. Good morning.

This morning the select committee is holding hearings on four bills and will mark up three. We will open the session by receiving testimony on S. 2564, a bill that will authorize a limited extension of the sovereignty of the Salt River Pima-Maricopa Indian community in Arizona over non-Indians and non-member Indians over criminal misdemeanors. We will then mark up three bills, including the Salt River bill and two bills to restore the Federal trust relationship with tribes in Oregon and Texas, and concludes the day with testimony on three bills to settle water claims of the Papago Tribe in Arizona.

With regard to S. 2564, the Salt River bill, I would like to remark that this is precedent-setting legislation. At this time no Indian tribe exercises any criminal jurisdiction over non-Indians. During the 1970's this tribe and a few others did assert such jurisdiction. In 1978 the Supreme Court, in the case of *Oliphant* v. *Suquamish Tribe*—a case that was argued by our colleague, the senior Senator from the State of Washington—held by a divided vote that Indian tribes lacked inherent jurisdiction over non-Indians on criminal matters. In reaching this conclusion, the Court further stated that it was for Congress to decide whether Indian tribes should be authorized to try non-Indians.

I would like to stress that the situation at Salt River is very different from that found throughout much of Indian country, particularly in the northern plains areas where there is a great deal of checkerboard land ownership within the reservation boundaries and a significant intermingling of Indian/non-Indian resident population. In other words, the solutions to the law-and-order problem at Salt River may not provide an answer to the problems on other Indian reservations.

[The text of S. 2564 follows:]

II

99TH CONGRESS
2D SESSION

S. 2564

To provide for the proper administration of justice within the Salt River Pima-Maricopa Indian Reservation by granting jurisdiction to the Salt River Pima-Maricopa Indian Community Court over certain criminal misdemeanor offenses.

IN THE SENATE OF THE UNITED STATES

JUNE 17 (legislative-day, JUNE 16), 1986

Mr. GOLDWATER (for himself and Mr. DECONCINI) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for the proper administration of justice within the Salt River Pima-Maricopa Indian Reservation by granting jurisdiction to the Salt River Pima-Maricopa Indian Community Court over certain criminal misdemeanor offenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The Congress finds that—

(1) the Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian Community to live in peace and prosperity with other persons in Arizona;

(2) the Salt River Pima-Maricopa Indian Reservation is located within the eastern end of the Phoenix-Scottsdale-Mesa-Tempe metropolitan area and many thousands of non-Indians from those communities regularly transverse the Salt River Pima-Maricopa Indian Reservation;

(3) the courts of the Salt River Pima-Maricopa Indian Community do not have the jurisdiction to control criminal activity by non-Indians within the Salt River Pima-Maricopa Indian Reservation;

(4) the judges of the Salt River Pima-Maricopa Indian Community Court serve fixed terms and do not serve at the pleasure of the Salt River Pima-Maricopa Indian Community Council;

(5) the Chief Judge of the Salt River Pima-Maricopa Indian Community Court is elected by a vote of the people and the juvenile and associate judges are appointed by the President of the Salt River Pima-Maricopa Indian Community subject to the confirmation of the Community Council; and

(6) the Salt River Pima-Maricopa Indian Community has close relations with the municipalities surrounding it and those cities of Phoenix, Mesa, Tempe, and Scottsdale have endorsed the grant of jurisdiction made by this Act.

SEC. 2. (a)(1) The criminal ordinances of the Salt River Pima-Maricopa Indian Community which provide for misdemeanor offenses shall have the force of law in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation and shall apply with respect to acts and omissions committed in such area by any person, without regard to whether such person is an Indian or the interests of any Indian are affected by such acts or omissions.

(2) The courts of the Salt River Pima-Maricopa Indian Community shall have exclusive jurisdiction over misdemeanor offenses committed in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation in violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community by any person, without regard to whether such person is an Indian or the interests of any Indian are affected by such violation.

(b) The provisions of subsection (a) shall be considered to be a limited extension of the sovereignty of the Salt River Pima-Maricopa Indian Community over persons who are not Indians or are not members of the Salt River Pima-Maricopa Indian Community. Neither the criminal ordinances of the Salt River Pima-Maricopa Indian Community, nor the application or enforcement of such ordinances with respect to such persons, may be considered Federal law, or the exercise of Federal law, for any purpose.

(c) The provisions of title II of Public Law 90–284 (25 U.S.C. 1301, et seq.) shall apply with respect to—

(1) the criminal ordinances of the Salt River Pima-Maricopa Indian Community,

(2) the application and enforcement of such ordinances, and

(3) the jurisdiction granted to the courts of the Salt River Pima-Maricopa Indian Community under subsection (a)(2).

(d)(1) Nothing in this Act may be construed to alter or affect—

(A) the applicability of any Federal law in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation,

(B) the ability, or responsibility, of the United States to enforce Federal laws in such area, or

(C) the jurisdiction of the courts of the United States over misdemeanor or other offenses committed in such area in violation of any Federal law.

(2) The courts of the United States shall not have jurisdiction (except to the extent necessary to carry out the provisions of title II of Public Law 90–284) over misdemeanor offenses committed in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation in violation of the criminal ordinances of the Salt River Pima-Maricopa

Indian Community, but such courts shall retain jurisdiction over any offense committed in such area in violation of Federal law, even if the act or omission that constitutes such violation of Federal law is also a violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community over which the courts of such Indian Community have jurisdiction.

(e)(1) Nothing in this Act may be construed to alter or affect—

(A) the applicability of any law of the State of Arizona in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation,

(B) the ability, or responsibility, of the State of Arizona to enforce the laws of the State of Arizona in such area, or

(C) the jurisdiction of the courts of the State of Arizona over misdemeanor or other offenses committed in such area in violation of any law of the State of Arizona.

(2) The courts of the State of Arizona shall not have jurisdiction over misdemeanor offenses committed in the area within the boundaries of the Salt River Pima-Maricopa Indian Reservation in violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community, but such courts shall retain whatever jurisdiction over any offense

committed in such area in violation of any law of the State of Arizona that such courts would possess if this Act were not enacted, even if the act or omission that constitutes such violation of State law is also a violation of the criminal ordinances of the Salt River Pima-Maricopa Indian Community over which the courts of such Indian Community have jurisdiction.

○

The CHAIRMAN. Our first witnesses today are Victoria Toensing, the Deputy Assistant Attorney General for the Criminal Division of the Justice Department, and Hazel Elbert, Deputy to the Assistant Secretary for Indian Affairs, Department of the Interior.

Before that, I would like to ask that the statement of the Honorable John McCain be made a part of the record.

[Prepared statement of Mr. McCain appears in the appendix.]

The CHAIRMAN. Welcome to the committee. Let me assure you that we do have your full statement. We will be glad to include the record as though given in their entirety. You can summarize in any way you wish.

STATEMENT OF HAZEL ELBERT, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, TRIBAL OPERATIONS, DEPARTMENT OF THE INTERIOR

Ms. ELBERT. Good morning, Mr. Chairman.

I am pleased to be here today to discuss S. 2564, a bill to grant jurisdiction to the Salt River Pima-Maricopa Indian community court over certain criminal misdemeanor offenses.

S. 2564 would convey jurisdiction over misdemeanor offenses in violation of tribal criminal ordinances by anyone within the boundaries of the Salt River Pima-Maricopa Indian Reservation. The bill would not alter the applicability of Federal or State laws or the jurisdiction of Federal or State courts over misdemeanors or other offenses committed on the reservation in violaiton of Federal or State laws.

We support enactment of S. 2564 because of the unique circumstances at the Salt River Pima-Maricopa Indian Reservation. Our support of this bill does not mean we necessarily favor permitting other tribes to exercise such jurisdiction. Rather, we would consider the appropriateness for each reservation on a case-by-case basis based on the standards I will discuss later in my statement.

The Salt River Pima-Maricopa Reservation is located in the eastern Phoenix metropolitan area. Approximately 80,000 travelers cross the reservation daily on their way to Scottsdale, Tempe, and other major Arizona cities. A large number of tourists also enter the reservation by way of boating and tubing along the river. Although the tribe maintains good relationships with municipalities surrounding the reservation, there is considerable uncertainty concerning who has the jurisdiction over offenses committed on the reservation. The metropolitan location of this reservation has added to the drug traffic, litter, skinny dipping, and other assorted problems.

A recent case, *Duro* v. *Reina*, involved an allegation that a member of the Torrez-Martinez Band of Mission Indians shot a member of the Gila River Pima-Maricopa Indian community while on the Salt River Reservation. A grand jury indictment for first degree murder was returned on July 25 but was dismissed without prejudice on September 17, 1985. The tribe then prosecuted the accused in tribal court for illegal discharge of a firearm and imposed the maximum sentence of $500 and 6 months in jail. A Federal district court, however, ordered the accused released on the grounds that the tribal court had no jurisdiction over a nontribal member

whether Indian or non-Indian. The tribe has appealed that decision to the U.S. Court of Appeals where it is currently pending.

This case illustrates the need to clarify the jurisdiction of the tribe for offenses committed within the reservation boundaries.

The support of this bill by the Governor and attorney general of the State of Arizona and the municipalities of Phoenix, Scottsdale, Mesa, and Tempe demonstrates that the tribe's neighbors have high regard for the tribe's criminal justice system.

The Salt Lake Pima-Maricopa Indian community has a department of public safety which includes a police force and a fire department. It maintains a court system that is independent from the tribal council and which includes an elected chief judge, a juvenile judge, and part-time associate judges who are appointed for set terms. The tribal ordinances have been reviewed by the Bureau of Indian Affairs and are, in our judgment, fair and appropriate. The court system is bound by the applicable provisions of the Indian Civil Rights Act, which limits the penalties tribal courts can impose and provides persons within the jurisdiction of Indian tribes rights similar to those provided all citizens under the Bill of Rights of the United States Constitution. Because of these circumstances, we agree that this tribe can and should have jurisdiction over misdemeanor offenses committed by anyone in violation of tribal criminal ordinances on the reservation.

We are aware that, if enacted, this legislation would make an exception for this one reservation from the Supreme Court's decision in *Oliphant* v. *Suquamish Indian Tribe*, which held that tribal courts did not have jurisdiction over non-Indians who committed criminal offenses on the reservation. While this issue is a matter of great concern for all reservations, we are not prepared at this time to propose a national policy. However, we are prepared, as in this case, to consider the merits of each reservation court system for the appropriateness of authorizing such jurisdiction.

The standards to be considered would be those I have discussed for this case:

An independent judiciary capable of adequately trying criminal misdemeanor cases;

Comprehensive and equitable tribal ordinances;

A geographical location which encourages contact with a large number of non-tribal members;

The support of local and State governments; and

The ability of the tribe to accommodate the cost of exercising misdemeanor jurisdiction over non-tribal members.

We defer to the Department of Justice on potential legal concerns that the Department may have on this legislation.

This concludes my statement, Mr. Chairman.

[Prepared statment of Ms. Elbert appears in the appendix.]

The CHAIRMAN. Thank you very much.

Do you have a statement?

STATEMENT OF VICTORIA TOENSING, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ms. TOENSING. Yes; I do, Mr. Chairman, very briefly.

I want to thank you for asking to hear the Department of Justice's views on whether the Salt River-Pima Maricopa Indian Reservation community court should have jurisdiction over nonmembers who violate that community's code. My statement will be very brief.

While we support Senator Goldwater's and Senator DeConcini's legislation in this case, we feel compelled to provide you with some of our concerns.

As you know, the Supreme Court has held that the community court does not have jurisdiction over non-Indians who violate the community criminal code, but, in that opinion, appeared to recognize that tribes can be given criminal jurisdiction over non-Indians if Congress affirmatively delegates that power. The Department of Justice wishes to ensure that those tourists are given adequate procedural and constitutional protection. Let me go through just a few of the concerns.

First, there is the possibility of a substantial caseload increase which could overload the system. The Department of Interior has assured us they have looked into this possibiliity and there are adequate resources available so that this will not be a problem.

Our second concern flows from the possibility of a caseload increase, and deals with the potential overcrowding, of the prison system, a problem already present throughout the country at this time. The Department of Interior has also assured us that adequate jail facilities will be available on the reservation or through detention agreements with neighboring jurisdictions.

Another concern is the protection of the tribes against liability, an issue which is always present when there is police action. We have been assured that the tribes have liability insurance to protect them from the litigious society we seemed to have spawned in recent years.

Another concern, an important due process question, Mr. Chairman, is the right to counsel. Current case law holds that an Indian defendant in the Indian court system is not entitled to free appointed counsel. It is not a settled matter however, whether non-Indians also do not have the right to free appointed counsel. That issue may pose a problem down the road.

The statutory constitutional rights—which were passed I believe in the last decade—require that a defendant charged with an offense punishable by imprisonment has the right to demand a trial by jury of not less than six persons. The tribe must be prepared to set up a format for providing jury trials.

Last, we also note that there is no right of appeal. The only procedure for review of a tribal court ruling is a petition for habeas corpus in Federal court, and that's a very limited appellate right, with a very limited scope of review.

These are just some of our concerns. We have talked them over with the Department of the Interior. I am sure that they will keep on top of them so that they do not become problem for the Indians.

[Prepared statement of Ms. Toensing appears in the appendix.]

The CHAIRMAN. Thank you very much.

What appeal rights will persons adjudicated in tribal court have?

Ms. TOENSING. They can petition for a writ of habeas corpus through a Federal district court, but it's a very limited review. The

courts do not necessarily look at the whole process. We anticipate that they might only look at whether the sentence was improper. It's very limited.

The CHAIRMAN. The testimony that——

Ms. TOENSING. I'm sorry, I didn't hear.

The CHAIRMAN. They certainly would look at the procedures, wouldn't they?

Ms. TOENSING. Well, not from a de novo standard. They would probably have a very limited scope of review whether the body was——

The CHAIRMAN. In other words, the Federal court would not under this legislation have the authority to look at whether proper procedures had been followed?

Mr. TOENSING. Well, it would just—it would't be a constitutional procedure that we are familiar with. It would be based on—we don't know, but they would be looking at what constitutional rights are provided by the Indians——

The CHAIRMAN. We've got due process. There's got to be some type of——

Ms. TOENSING. However, the court has held that Indians on an Indian reservation do not, for example, have the free appointed counsel right. That would be unheard of for us in our system. As I said, that's an open question as to whether the court will apply that standard——

The CHAIRMAN. But it will except——

Ms. TOENSING. Yes; but will there be those exceptions? There may not be. We don't know how the courts are going to rule.

The CHAIRMAN. Your testimony also raises a question with respect to the right to appointed counsel. What rights do Indians have in Federal court with respect to misdemeanor offenses? Are these rules the same for State courts?

Ms. TOENSING. Indians in Federal courts have the same rights as anybody else in a Federal court. The issue is what rights they have in Indian courts, I believe.

The CHAIRMAN. Well, my question is, What right does the U.S. citizen who is an indigent have? They have rights——

Ms. TOENSING. A right to a free appointed counsel.

The CHAIRMAN. That's right, but would they in this case?

Ms. TOENSING. We don't know that. That is an issue that I bring to your attention.

The CHAIRMAN. But you support the bill not knowing what rights the non-Indian may or may not have under this bill?

Ms. TOENSING. We support it in the sense that we realize the very unique problem in this situation, Mr. Chairman. These are great problems on this Indian reservation, but we feel compelled to point out the potential problems down the road. We should make you aware of that.

The CHAIRMAN. Because this seems to be the road we're going on, the Justice Department raises certain questions, of course, in your testimony. Let me ask Ms. Elbert—what are the jail facilities at Salt River? Do you consider them adequate to handle any significant increase if such should occur?

Ms. ELBERT. Yes; Mr. Chairman, we do. The tribe does have a jail that's adequately staffed. It is a 10-year-old jail, and I believe just

within the last few years they've made an addition to that. If they don't have adequate jail facilities, they can always enter into agreements with surrounding areas.

The CHAIRMAN. Now the Salt River community, I'm told, apparently exercised criminal jurisdiction over non-Indians during the 1970's. Are you aware of any complaints stemming from that period regarding the way in which the tribal justice system operated?

Ms. ELBERT. No; I'm not.

The CHAIRMAN. I understand the land base of the Salt River community is approximately 50,000 acres. Is there any significant ownership of land within this reservation by non-Indians?

Ms. ELBERT. I believe all of the 50,000 acres are intra-status. There is a 500-unit mobile home park on the edge of the reservation that has a population of approximately——

The CHAIRMAN. Within the reservation it is all Indian-owned land?

Ms. ELBERT. All Indian-owned land, yes.

The CHAIRMAN. What's the population of the Salt River Reservation?

Ms. ELBERT. About 5,000.

The CHAIRMAN. What percentage is Indian versus non-Indians?

Ms. ELBERT. About 1,500 of those are non-Indians.

The CHAIRMAN. How many are non-member Indians?

Ms. ELBERT. Non-member Indians, I don't have a figure on that.

The CHAIRMAN. Can you make a guess?

Ms. ELBERT. I don't know, sir. The tribe would probably be able to give you that information.

The CHAIRMAN. Ms. Elbert, the Department of Justice has deferred this question to you: Is it the opinion of the Department of the Interior that this tribal court is sufficiently well organized and staffed to handle this new jurisdiction?

Ms. ELBERT. Yes; it is. We fell that it is. The judges for the court are trained through a BIA contract with the National Indian Justice Center. They are funded under a Public Law 93-638 contract. The chief judge for this court is also the vice president—he sits on the board of directors—for the Justice Center, and it's that center that develops training criteria for the judges.

The CHAIRMAN. Ms. Toensing, what about using a Federal magistrate?

Ms. TOENSING. In the court system?

The CHAIRMAN. Yes; a Federal magistrate.

Ms. TOENSING. In the Indian courts? I think the tribes might have a very hard time——

The CHAIRMAN. This is a suggestion made by my colleague just 1 minute ago, Senator Melcher, and he asked me to voice that. So with you here, I thought I'd voice that.

Ms. TOENSING. That really requires a response by the Department of the Interior or BIA, because I think they would have difficulties with that.

Ms. ELBERT. In this situation I think we feel that this court is adequate to handle the new caseload that it would inherent from this legislation. Maybe I'm not understanding your question.

The CHAIRMAN. The point was raised by my colleague from Montana, and he said that he may well favor an amendment that would set up a Federal magistrate system instead of what we have at present which is, as I would understand it, a halfway house.

Ms. ELBERT. Let me refer to my backup here. I think he would have a better answer than I do. This is Joe Little from the Judicial Services Office in the Bureau of Indian Affairs.

Mr. LITTLE. Mr. Chairman, as has been pointed out, misdemeanor cases are not major crimes. We do have a Federal court system that does handle the major crimes and the major crimes acts. You've got that system handling it.

In terms of these being misdemeanor cases under the tribal courts, they are fully capable of dealing with those issues. I think in terms of setting up a Federal magistrate system, you're basically compounding the issue; you're just putting an overlay on the competent court systems that are already ready to handle them.

In terms of the civil rights area, the tribal court does have an appellate system for use prior to going taking on the civil rights provisions from the sixties' Civil Rights Act.

I might also point out we have reviewed this fairly extensively and it covers most of the areas. I think they've handled it more than adequately as opposed to the Federal magistrate.

Ms. TOENSING. From the Department of Justice's viewpoint on the Federal magistrate proposal, certainly the present magistrate system could not handle that. If we were going to even consider that, you would have to authorize and appropriate a whole new set of magistrates in order to carry that out.

The CHAIRMAN. That is, in fact, of course, the proposal as I understand it, but that's why I wanted to get it out on the table and get your reaction to it.

I appreciate your testimony. It's been very helpful to us.

We'll next hear from Mr. Gerald Anton, who is the president of the Salt River Pima-Maricopa Indian Community of Scottsdale.

Mr. Anton, it is good to have you here. I understand Richard Wilks is an attorney who is here from Phoenix as well.

STATEMENT OF GERALD ANTON, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY, SCOTTSDALE, AZ, ACCOMPANIED BY RICHARD B. WILKS, ATTORNEY, SHEA & WILKS, COUNSEL FOR THE COMMUNITY

Mr. ANTON. Good morning, Mr. Chairman, members of the committee.

I want to introduce, as you mentioned, Mr. Wilks, our attorney, and chief of police, Mr. Edwin Reyna.

I have a brief statement I would like to make.

The CHAIRMAN. Let me assure you that your entire statement will appear in the record as though you have given every word of it.

Mr. ANTON. Let me summarize my statement.

I am Gerald Anton, president of the Salt River Pima-Maricopa Indian Community. On behalf of the community and the community council, I wish to thank you for asking us to come here in support of S. 2564.

The CHAIRMAN. I might also point out that Senator Goldwater, who is a close friend of all of us, of course, and a member of this committee, is not able to be here. He was hospitalized last night and we understand he is doing all right. That's why he's not here.

He expressed his very great interest in this bill. As you know, he sponsored it, and he wishes he were able to be with us.

Mr. ANTON. I want to thank him for that. He's worked very closely with us on this. We have developed it over a period of years.

The CHAIRMAN. That's right. He's very proud of the relationship with the members here.

Mr. ANTON. Well, we are, too.

Let me just reiterate, as has been mentioned before, we've got the support of our neighboring jurisdictions—the cities of Phoenix, Scottsdale, Mesa, and Tempe—and the highest officials in the State government—the Governor's and the attorney general's offices supported this, the county, and everyone that's been involved in this.

I just want to make some comments, talk about some of the things that we discussed here this morning, and one is that we are surrounded by one of the fastest-growing metropolitan areas in the United States. We have 50,000 people that come to and from the greater metropolitan area across our community on probably four major roads, being the Keltra, McDowell, and Thomas and Indian school. It's a great burden on the community when we have no jurisdiction over the non-Indians that break these laws. So we have to face these problems.

The concern is expressed also by our neighbors because we work together to try to enforce these laws that are adopted by the court that we have, which is similar to our neighboring jurisdictions.

The Salt River community has had a long history of reliable self-government. The community maintains public safety. It maintains a court system. It includes an elected chief judge as well as a juvenile judge and two part-time associate judges who are appointed for set terms. The judges are supported by probation officers and other court personnel.

The history of the courts and of the police department reflects a justice system based on the principle of those rights of the United States Constitution as contained in the Civil Rights Act of 1968 and the bill of rights of the community's own constitution. So it's something that we're enforcing.

The community's police officers are trained in the State academy and are State certified as peace officers within the State of Arizona. The community court is served by judges who receive the most sophisticated training available and who exercise the independent judgment which is the hallmark of a sound judicial system. The community's department of public safety has regular professional contact with departments in surrounding communities and national law enforcement organizations. The courts and the law enforcement personnel of the Salt River Pima-Maricopa Indian Community are well qualified to carry out what has always been thought of as a proper function of local government—local law enforcement and adjudication.

The Salt River Indian Community has neighbors who share its concerns. The problems of law enforcement affect our surrounding

communities. Those cities, our neighbors, stand with us in this effort and have endorsed the proposal before you.

We have submitted further letters of support from the mayors of each of the four cities. One member of the Maricopa County board of supervisors has written a letter of support. Robert K. Corbin, attorney general of Arizona, wrote to Senator Goldwater:

"* * * in recognition of the need for effective law enforcement throughout the State of Arizona, I support the proposal."

Gov. Bruce Babbitt in his letter supports the concept put forward by the Salt River Pima-Maricopa Indian Community in S. 2564. Copies of all this information is here, and we have an exhibit that we want to share just to show you the impact that we have in the neatness of the community, and that we have 52,000 acres in the middle of the metropolitan area surrounded on three sides in a horseshoe shape.

The question that was asked earlier, all this is Indian land. There's no non-Indian land included in that. The major roads run right through here and that's where all that traffic comes in every morning and every night and in between.

So that's our concern. That's why we're here to testify.

The Salt River Pima-Maricopa Indian Community has the full support of its neighbors in the county and State officials. We want to thank you for the time and opportunity to testify here.

[Prepared statement of Mr. Anton appears in the appendix.]

The CHAIRMAN. You understanding that, given that—and we do have the same map, and it is helpful to us—that the misdemeanor offenses largely have to do with traffic, people that are moving through your reservation going from one point outside the reservation to another point outside the reservation? That would largely be what the intent of this legislation is to resolve.

Mr. ANTON. There are other activities within the community. We have a river that's flowing and their's a lot of tourists that come down. On a weekend we'll probably increase that population by I don't know how many thousand. I guess 5,000 or 6,000 people come within the community. There has to be some control on the activities that happen there.

The CHAIRMAN. What you're saying to this community is that you are attempting to set it up in a way that would be similar to what a city would set up, the control of misdemeanors and petty offenses, within you boundary lines.

Mr. ANTON. Right.

The CHAIRMAN. The city would control it. The appeal would still be able to be lodged with the higher Federal court on more serious offenses. In fact, original jurisdiction would lie with the higher court on more serious offenses.

Mr. WILKS. That's absolutely correct, Senator. The jurisdiction to be given here is only misdemeanor jurisdiction. Under the Federal code, the Federal courts have jurisdiction in felony matters and the community court would not have jurisdiction.

The CHAIRMAN. You are in sense then saying that you want jurisdiction much as the city of Phoenix would have jurisdiction over similar problems occurring within the city boundaries of Phoenix?

Mr. WILKS. That's absolutely correct.

The CHAIRMAN. In your reservation you are not entertaining any non-Indian held property within you reservation. So it's certainly all held by the residents and members of the tribe?

Mr. WILKS. That's absolutely correct.

The CHAIRMAN. In fact, I would imagine there's probably going to be some tribally-owned land or some Indian-owned land within the city of Phoenix, but this is not Phoenix non-Indian-owned land within your boundaries?

Mr. WILKS. That's correct.

The CHAIRMAN. I appreciate very much your testimony.

Mr. ANTON. Thank you.

The CHAIRMAN. Do you have any questions?

Senator DECONCINI. Yes, Mr. Chairman, if I may.

I'm sorry for my being late. I will just ask that an opening statement be printed in the record as if read.

The CHAIRMAN. Without objection, the Senator's opening statement will also be in the record.

Senator DECONCINI. Thank you very much.

[Prepared statement of Senator DeConcini appears in the appendix.]

Senator DECONCINI. Let me just ask a couple of questions, if I may.

Concerns have been expressed about the community court's ability to assume the——

The CHAIRMAN. Senator, if I might, let me defer to you because we were going to do a markup following these witnesses.

Senator DECONCINI. Yes, sir.

The CHAIRMAN. We don't have a quorum for the markup. Therefore, what we'll do is swing directly into the part that you wanted to chair in the hearing. Since I know you have a great deal of interest in this, I'll let you ask the questions of the chairman, and I'll excuse myself.

Senator DECONCINI. That's quite acceptable, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator DECONCINI. I'm glad that you can——

The CHAIRMAN. I think we've made a very good record and you'll add to it.

Senator DECONCINI (acting chairman). I appreciate your doing just that, Mr. Chairman, I know you have other things to do. I appreciate your holding these hearings on Arizona matters.

If I may just express my concerns about the community court's ability to assume the additional caseload which may result from the extension of criminal jurisdiction, in your judgment, Mr. Chairman, or your attorney, will the community court be able to absorb the increase in caseload? Will additional resources be needed by your courts, and what kind of detention facilities are now available on the reservation?

Mr. WILKS. Senator DeConcini, the courts certainly will be able to handle any additional caseloads. The courts can be increased in associate judge positions which, as we have indicated earlier, are for a set term. Any increase in cost will be borne by the community. The detention facilities have just been increased, I think 3 years ago, so they are now adequate. Chief of police, Mr. Reyna, is here and can answer directly to those questions.

Senator DECONCINI. How many positions do you have in your detection facility?

Mr. REYNA. We currently have facilities—adult facilities can hold 38 people.

Senator DECONCINI. How many are in there, say, like today?

Mr. REYNA. Average daily balance is around 16 within the last year or so. But the experience in the——

Senator DECONCINI. You say, Mr. Wilks, that if an additional judgeship were necessary, the tribal community can financially support that?

Mr. WILKS. That's correct.

Senator DECONCINI. Does that mean without asking for Federal funds in some other area to make up for the expense?

Mr. WILKS. That's correct, Senator. The tribe now supports above the amount of the BIA contracts, the court system and the law enforcement systems of the community.

Mr. ANTON. Senator, that's over the years, over the past 8 or 10 years. So we keep putting additional dollars into that because it has increased.

Senator DECONCINI. What does that amount to; do you know?

Mr. ANTON. Right now it's close to $400,000.

Senator DECONCINI. $400,000?

Mr. ANTON. $358,000, somewhere in that area.

Senator DECONCINI. $358,000 roughly. Thank you.

Should tribal law enforcement personnel be charged with rights violations by the non-members, what process will action for damages fall under?

Mr. WILKS. The community has comprehensive liability insurance and has dealt with its insurance company in such a way as to let them understand that they do not use the protection of sovereign immunity in regard to liability actions.

Indeed, to the extent that because the police force is to some extent supported under BIA contracts and those contracts require that liability insurance not hide behind a sovereign immunity plea on both counts, anybody who felt himself injured would have recourse and wouldn't be deferred by that kind of position.

Senator DECONCINI. Mr. Wilks, you make reference to the fact that sovereign immunity would not be raised now. How can one who is not at this hearing today be satisfied in the future that that wouldn't change? What's tangible for the record here to be assured of that in the event that an action was brought?

Mr. WILKS. Senator, two things. One, there are requirements, as I have indicated, under BIA contracts that don't allow that kind of avoidance of——

Senator DECONCINI. But could not the contract be changed?

Mr. WILKS. It could be changed. Second, I think more important than institutional matters, the community has to live where it lives; it has to operate within the larger community. The clear understanding to the members of the council of the Salt River community and the members generally of the community is that they have to react to people's claims as they may be made in the future to not do that.

Senator DECONCINI. You're talking to the credibility of the community.

Mr. WILKS. That's right. To not do that would wipe out what has been carefully built up in relationships over a number of years.

Senator DECONCINI. I must say, to compliment the community, I think that is the case generally in the non-Indian community there, that there is substantial credibility that's been fostered by the good leadership of your neighbors and the tribe, including the chairman and his council.

There are also questions about how an individual's right to counsel would be handled. I understand there has been court decisions which have held that title XV of U.S.C. 1302 does not entitle an Indian defendant to the right to have a court-appointed counsel. The question is, Will this ruling apply to non-Indians who are being brought into tribal courts?

Mr. WILKS. Senator, I don't have a copy of 1302 here but, as I recall the language, it does not speak in terms of Indian or non-Indian. The Indian bill of rights, which 1302 is, provides for certain enumerated rights very similar to those in the United States Constitution with a couple of exceptions, one of them being the requirement that any defendant have a right to counsel but not to free counsel. That is not predicated on race or status at all.

We obviously don't have the authority to—the council does not—to amend and change Federal law. That does consist of a problem, but it's a problem of Federal law the way the Indian bill of rights was enacted.

Senator DECONCINI. The testimony of the Justice Department cites, and I quote, "Title XV, U.S.C. 1302, provides in part, 'No Indian tribe in exercising power of self-government shall—(6) deny to any person in a criminal proceeding the right at his own expense to have the assistance of counsel for his defense.' "

My question is, What about a non-Indian?

Mr. WILKS. Yes; I see that quote here. I would point out, Senator, that it talks about "deny to any person." It is not limited by status or race. We're talking here, as they were in the Indian civil rights act, about misdemeanors only. We're not talking about serious crimes.

Senator DECONCINI. Well, when you say that, Mr. Wilks, a misdemeanor could result in how many months in detention?

Mr. WILKS. It's limited by the Indian civil rights act to 6 months of detention.

Senator DECONCINI. That might be very serious.

Mr. WILKS. I would agree with you 100 percent.

Senator DECONCINI. Even though I know the significant difference on your record of a felony or a misdemeanor. I'm not interested in prolonging this at a great length, but I would like to suggest that we consider some clarifying language here that would provide certainly for non-Indians and Indians—that they have the right to counsel.

Mr. WILKS. Let me tell you what the community has done in regard to this. The community council several years ago funded out of tribal funds both a community prosecutor advocate and a defense advocate. On the defense side—these are entirely criminal matters—on the defense side, it has made additional funds avail-

able in the budget for situations which are conflicts, which may be two defendants in the same transaction. So there exists already within the community a public defender system——

Senator DECONCINI. That's very encouraging. Would the tribe have any objections to mandating that—that they would provide either a public defender or an attorney if in fact a defendant could demonstrate that they did not have any resources to pay for such? You've already done——

Mr. WILKS. We've already done this. There are advocates, but the system uses advocates and not lawyers largely.

Senator DECONCINI. Well, with advocates—my point is, and you may want to think about this because it's something that we had not talked about, but if you had a situation where the tribal economy were to experience a slowdown and you had to do certain budget cutting and this was lost, my point is, would you be willing to put that in a priority position so you would continue to fund that regardless of future budget problems? Hopefully the tribe won't ever experience budget problems.

Mr. ANTON. Senator, I think that was the concept that the council was concerned about that's why it implemented it. Usually historically has shown that once we fund something it's pretty hard to get it out of the system when you create a department and it grows and——

Senator DECONCINI. I understand that. That's true here, too. Once we pass this bill, in the event your public defender system—let me refer to it as that—were abolished, then what do we do? My point, Mr. Chairman, is, Would you be willing to have some mandates that you provide that system?

Mr. ANTON. I think that the council wouldn't be opposed to seeing that justice is served because that's our concern. That's our concern—that justice is served. We need to look again to our credibility as to our neighbors and being able to provide services to the general public.

Senator DECONCINI. Well, my question is, could you live with a requirement in this legislation which required that the present system which you have in place be maintained during the effective dates of this jurisdictional change? That's really my question.

Mr. ANTON. Yes.

Senator DECONCINI. Thank you. I don't know whether we'll do it, but I want to have it on the record.

My last question is, In your opinion, Mr. Wilks, what is the right of appeal that the defendant will have in the community court? What happens next?

Mr. WILKS. There is an appellate division of the community court which deals with procedural concerns or procedural error in the trial court. There also is the Indian civil rights act provision for petition for writ of habeas corpus to the U.S. district court. I view that as broader than the Justice Department representative believes.

It enables, I believe, the U.S. district court to test questions of due process on every level to see whether there's been a fair trial in the tribal court. I think it well protects individuals who have been subjected to misdemeanor criminal prosecution.

Senator DECONCINI. Fine. I have no further questions. Thank you very much.

[Whereupon, the committee recessed the hearing on S. 2564 and immediately began a hearing on consideration of S. 2105, S. 2106, and S. 2107 which is contained in another transcript.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF HON. JOHN McCAIN, MEMBER OF CONGRESS FROM ARIZONA

Mr. Chairman: I appreciate the opportunity to appear before the Committee today on S. 2564, a bill "To provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community". I commend my Arizona delegation colleagues Senators Goldwater and Deconcini for introducing S. 2564 and acting quickly upon the bill. I, along with Congressmen Udall and Kolbe introduced H.R. 4900, a similar bill in the House.

Prior to the 1978 U.S. Supreme Court decision in Oliphant v. Suquamish Indian Tribe, Indian tribal governments exercised limited criminal jurisdiction over Indians and non-Indians passing through or located on lands within the boundaries of their communities; much like local systems of government such as counties and municipalities.

Oliphant defined both the limits on a State with regard to jurisdiction within Indian lands, and the limits of tribal governments over non-Indians. Specifically, the Court stated that under the plenary powers of the Constitution, Congress could, but had not, grant Indian tribes jurisdiction over non-Indians for criminal offenses. This reversed a large body of case law that had developed, particularly in relation to the Indian Civil

Rights Act of 1968. The Indian Civil Rights Act guaranteed to the Indian people the general constitutional rights outlined in the U.S. Constitution and Bill of Rights, except that it differed in regard to the separation of Church and State, and it did not require public provision of counsel to indigents.

As an unforeseen consequence of this decision, a gap now exists in some areas of the country concerning misdemeanor criminal jurisdiction over non-Indians passing through Indian lands. Prior to Oliphant, many of the criminal codes of Indian tribes provided the misdeameanor provisions that are not included in the Federal Major Crimes Act, nor would be considered by State criminal codes which are enforced by Federal officials pursuant to the Assimilated Crimes Act. Since Oliphant it has been unclear what misdemeanor law applies to non-Indians within Indian boundaries.

In the case of the Salt River Pima-Maricopa Community in Arizona certain actions which are violations of misdemeanor criminal codes for Community residents are not applicable to non-Indians, and are not violations of any applicable State, county or municipal codes; resulting in a situation in which two classes of people exist side-by-side and law enforcement officials can only prosecute the Indian class.

For example, it is a violation of the Community criminal code to publicly consume alcoholic beverages. However, non-Indians regularly disregard this law because tribal police

cannot enforce the law against them. This has caused disputes over the use of public areas within the Community's borders and hard feelings between Indians and non-Indians.

S. 2564 would grant the Salt River Pima-Maricopa Indian Community misdemeanor criminal jurisdiction over non-Indians passing through the reservation. Congress should do this, not only to bring equity back to this particular area of government in Arizona, but as a recognition of the efforts of the Salt River Community to act as a responsible citizen and good neighbor in Arizona.

The mayors of all the surrounding non-Indian communities and the governor of the State of Arizona and the State Attorney General have endorsed this legislation. These local and State officials recognize that Indian communities should be treated like other communities in the State and be accorded the same respect and responsibilities.

I am hopeful that the legislation will move quickly through Congress. I recognize the need to make a complete record on this issue as it would be the first Congressional exercise of its authority to grant such jurisdiction, as laid out by the U.S. Supreme Court decision in Oliphant. I believe this legislation is necessary and appropriate, and I urge the Committee to support this effort. While S. 2564 and H.R. 4900 are quite similar, I believe S. 2564 contains several redunancies that may confuse the issue. I have attached to my statement a copy of the House language for Committee consideration. Thank you.

A BILL

To provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby finds that:

(a) The Salt River Pima-Maricopa Indian Reservation was established on Federal lands for the purpose of providing a place for members of the Salt River Pima-Maricopa Indian Community to live in peace and prosperity with other persons in Arizona.

(b) The Salt River Pima-Maricopa Indian Community Reservation is located within the eastern end of the Phoenix-Scottsdale-Mesa-Tempe metropolitan area and many thousands of non-Indians from those communities regularly transverse the Salt River Pima-Maricopa Indian Community's reservation and the courts of the Salt River Pima-Maricopa Indian Community do not have the jurisdiction to control criminal activity by non-Indians within the Community.

(c) All persons have the right to appeal decisions concerning their constitutional protections, as defined by the Bill of Rights of the United States Constitution, to the federal court system whether within the jurisdiction of a State or an Indian tribe.

(d) The Salt River Pima-Maricopa Indian Community has a long established court system where the judges serve fixed terms and do not serve at the pleasure of the Salt River Pima-Marciopa Indian Community Council.

(e) The Chief Judge of the Salt River Pima-Maricopa Indian Community Court is elected by a vote of the people and the juvenile and associate judges are appointed by the President of the Salt River Pima-Maricopa Indian Community subject to the confirmaton of the Community Council.

(f) The Salt River Pima-Maricopa Indian Community has close relations with the municipalities surrounding it and the cities of Phoenix, Mesa, Tempe and Scottsdale have endorsed the granting of jurisdiction provided in this Act, to address the unique enforcement situation surrounding the community.

SEC. 2.(a) The United States hereby grants to the Salt River Pima-Maricopa Indian Community the jurisdiction to try in the courts of the Salt River Pima-Maricopa Indian Community any persons who while within its territory commits a misdemeanor offense a defined by the criminal ordinances of the Salt River Pima-Maricopa Indian Community.

(b) The courts of the Salt River Pima-Maricopa Indian Community shall be bound by the applicable provisions of the Indian Civil Rights Act, Public Law 90-284, Title II, Sec. 202, 82 Stat. 77, which limits the penalties tribal courts can impose and awards persons within the jurisdiction of Indian tribes rights similar to those provided all citizens in the Bill of Rights of the United States Constitution.

JUN 30 1986

RICHARD H. BRYAN
Governor

STATE OF NEVADA
INDIAN COMMISSION
472 Galletti Way
Sparks, Nevada 89431
(702) 789-0347

ELWOOD MOSE
Executive Director

1986 JUL 21 PM 4:45

26 June 1986

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The Honorable John McCain
United States Congressman
411 So. Mill Ave, Suite 201
Tempe, Arizona 85281

Dear Congressman McCain:

I understand that you have introduced a bill which would give the Salt River Tribe misdemeanor jurisdiction over non-Indians on the reservation; that this would resolve certain law enforcement problems in the Indian Country.

Nevada's Legislature faced a similar problem and in 1985 passed a measure extending arrest powers to federal officers such as BIA police as well as tribal police. Arrest powers provide for public offenses committed within or outside an officer's presence, reasonable cause, warrants, &cet.

Why couldn't Arizona do the same? Why couldn't the Salt River or any other Tribe further the cause of state/tribal relations instead of continually turning to the federal government for remedies? It seems that daily, the federal government is expected to decide upon not only legal, but moral and ethical issues involving not only Indians but the entire country as well.

Indian tribes expect to be treated as sovereigns without the attendant responsibilities of acting governments. I would urge you to re-examine the matter and lay the issue at the doorstep of state and tribal government. Thank you.

Truly,

ELWOOD MOSE

JOHN McCAIN
FIRST DISTRICT, ARIZONA

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

COMMITTEE ON EDUCATION AND LABOR

SELECT COMMITTEE ON AGING

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July 14, 1986

Mr. Elwood Mose, Executive Director
Indian Commission
State of Nevada
472 Galletti Way
Sparks, Nevada 89431

Dear Mr. Mose:

Recently you contacted me in regard to H.R. 4900, a bill "To provide for the proper administration of justice within the boundaries of the Salt River Pima-Maricopa Indian Community." I was disappointed in your comments, and I believe you should look into the matter with the proper entities within the State of Arizona.

You suggest that Arizona should adopt a measure similar to that adopted by the Nevada State Legislature in 1985. As you may not know current Arizona State law provides for the training and cross-deputization of tribal police. In fact Salt River Community tribal police are trained at the Arizona State Police Academy and are authorized to enforce State and county law.

Later you write, "Indian tribes expect to be treated as sovereigns without the attendant responsibilities of acting governments." This is an unfortunate statement, made without looking into the facts of the situation. The Salt River Community has a long history of interaction and cooperative efforts with the surrounding nonIndian communities, so much so, that the Mayors of Scottsdale, Mesa, Tempe and Phoenix all support the legislation. Additionally, the Governor and Attorney General of the State support H.R. 4900.

The Salt River Community has asked the delegation to support legislation to grant them the ability to enforce "the Community" laws in an equal fashion. The most common problems are with the Community laws against public consumption of alcohol and with the dumping of trash and construction materials. Under Community laws both are punishable by a fine and small jail sentences. There is no corresponding State or county civil or criminal law to enforce. As a result nonIndians can flaunt the law on Community lands. H.R. 4900 would rectify this situation. I have enclosed a copy of the bill for your use, as well as, a copy of my remarks.

Sincerely,

John McCain
Member of Congress

PREPARED STATEMENT OF HAZEL ELBERT

Good morning Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss S. 2564, a bill to grant jurisdiction to the Salt River Pima-Maricopa Indian Community Court over certain criminal misdemeanor offenses.

S. 2564 would convey jurisdiction over misdemeanor offenses in violation of tribal criminal ordinances by anyone within the boundaries of the Salt River Pima-Maricopa Indian Reservation. The bill would not alter the applicability of Federal or State laws or the jurisdiction of Federal or State Courts over misdemeanors or other offenses committed on the reservation in violation of Federal or State laws.

We support enactment of S. 2564 because of the unique circumstances at the Salt River Pima-Maricopa Indian Reservation. Our support of this bill does not mean we necessarily favor permitting other tribes to exercise such jurisdiction. Rather, we would consider the appropriateness for each reservation on a case-by-case basis based on the standards I will discuss later in my statement.

The Salt River Pima-Maricopa Indian Reservation is located in the eastern Phoenix metropolitan area. Approximately 80,000 travelers cross the reservation daily on their way to Scottsdale, Tempe, and other major Arizona cities. A large number of tourists also enter the reservation by way of boating and tubing along the river. Although the tribe maintains good relationships with municipalities surrounding the reservation, there is considerable uncertainty concerning who has the jurisdiction over offenses

committed on the reservation. The metropolitan location of this reservation has added to the drug traffic, litter, skinny dipping and other assorted problems. A recent case, Duro v. Reina (Jan. 8, 1985, No. Civ. 84-2107 Ph. WPC), involved an allegation that a member of the Torrez-Martinez Band of Mission Indians shot a member of the Gila River Pima-Maricopa Indian Community while on the Salt River Reservation. A grand jury indictment for first degree murder was returned on July 25 but was dismissed without prejudice on September 17, 1985. The tribe then prosecuted the accused in tribal court for illegal discharge of a firearm and imposed the maximum sentence of $500 and 6 months in jail. A Federal district court, however, ordered the accused released on the grounds that the tribal court had no jurisdiction over a non-tribal member whether Indian or non-Indian. The tribe has appealed that decision to the U.S. Court of Appeals where it is currently pending.

This case illustrates the need to clarify the jurisdiction of the tribe for offenses committed within the reservation boundaries.

The support of this bill by the Governor and Attorney General of the State of Arizona and the municipalities of Phoenix, Scottsdale, Mesa and Tempe, demonstrates that the tribe's neighbors have high regard for the tribe's criminal justice system.

The Salt River Pima-Maricopa Indian Community has a department of public safety which includes a police force and a fire department. It maintains a court system that is independent from the tribal council and which includes an elected chief judge, a juvenile judge, and part-time associate judges who are appointed for set terms. The tribal ordinances have been reviewed by the Bureau of Indian Affairs and are, in our judgment, fair and appropriate. The court system is bound by the applicable provisions of the Indian Civil Rights Act, which limits the penalties tribal courts can impose and provides persons

within the jurisdiction of Indian tribes rights similar to those provided all citizens under the Bill of Rights of the United States Constitution. Because of these circumstances, we agree that this tribe can and should have jurisdiction over misdemeanor offenses committed by anyone in violation of tribal criminal ordinances on the reservation.

We are aware that if enacted, this legislation would make an exception for this one reservation from the Supreme Court's decision in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), which held that tribal courts did not have jurisdiction over non-Indians who committed criminal offenses on the reservation. While this issue is a matter of great concern for all reservations, we are not prepared at this time to propose a national policy. However, we are prepared, as in this case, to consider the merits of each reservation court system for the appropriateness of authorizing such jurisdiction.

The standards to be considered would be those I have discussed for this case:

(1) an independent judiciary capable of adequately trying criminal misdemeanor cases;

(2) comprehensive and equitable tribal ordinances;

(3) a geographical location which encourages contact with a large number of non-tribal members;

(4) the support of local and State governments; and

(5) the ability of the tribe to accomodate the cost of exercising misdemeanor jurisdiction over non-tribal members.

We defer to the Department of Justice on potential legal concerns that the Department may have on this legislation.

This concludes my prepared statement. I will be happy to answer any questions you may have.

before the District Court for the District of North Dakota. This legislation, if enacted, will at one stroke restore to the Community Court the jurisdiction it is said to have exercised over non-Indians before the Oliphant decision, and obviate the need to litigate the question of jurisdiction over nonmember Indians.

We are aware of the support this bill has received from elected officials of the State of Arizona and the surrounding local jurisdictions whose citizens' rights and welfare would be most affected by this legislation. While we have no direct knowledge of the capabilities of the Community Court, we cannot but infer from this universal approval by those in a position to judge, that it will prove a satisfactory tribunal to the citizens who will be brought before it. In the absence of adverse views or information, we defer to these informed judgments.

I turn now to our concerns. This extension of jurisdiction is sought largely because of the tens of thousands of nonresidents who traverse the Reservation daily. This could mean a very substantial caseload for the Community Court. We hope that the Court will not find itself unable to cope with its added responsibilities. The Department of Interior assures us that adequate resources are available. We defer to that Department's familiarity with the Community and its budget. This is an important experiment in Indian criminal law. It

PREPARED STATEMENT OF VICTORIA TOENSING

Mr. Chairman and Members of the Committee, I am pleased to be here today to present the views of the Department of Justice on S. 2564.

S. 2564 would extend the jurisdiction of the Community Court of the Salt River Pima-Maricopa Indian Reservation to violations of the Community Criminal Code committed by nonmembers of the Pima-Maricopa Community, whether Indian or non-Indian. The bill also provides that it in no way expands or contracts existing State or Federal jurisdiction on the Reservation. The Department of Justice is happy to support the concept underlying this bill. We have, however, certain concerns that we feel compelled to bring to the Committee's attention.

Under current law the Community Court does not have jurisdiction over non-Indians guilty of conduct violating the Community Criminal Code. This follows from the decision of the Supreme Court in the case of Oliphant v. Suquamish Tribe, 435 U.S. 191 (1978). That decision does appear to recognize, however, that tribes can be given criminal jurisdiction over non-Indians by an affirmative delegation of such power by Congress. 453 U.S., at 208. Whether a tribal court may exercise jurisdiction over Indians who are nonmembers of the tribe has not been authoritatively resolved, and is now pending before the Court of Appeals for the Ninth Circuit as well as

would be tragic if it were to fail because of such a readily foreseeable and avoidable impediment.

A related concern is whether the Community will have jail facilities adequate to house the increased number of prisoners that may be anticipated. Some provision will have to be made to avoid overcrowding conditions that would fall afoul of federal incarceration standards. The Department of Interior informs us that adequate jail facilities will be available on the Reservation or through detention agreements with neighboring jurisdictions.

The possibility that tribal wardens or officers may violate - or be accused of violating - the rights of non-members raises questions of redress to which we do not have answers. Among these are: Will actions for damages lie, or will they be barred by sovereign immunity? Can Bivens actions be filed? What courts will have jurisdiction over such suits? We are informed by the Department of Interior that the Community has liability insurance covering its police officers should judgments be recovered against them.

An important consideration that this Committee should bear in mind is that by extending the Community Court's jurisdiction to this additional group of defendants, the bill does so not only with respect to the Community Criminal Code as it now stands, but as it may from time to time be amended by the Tribal Council. At the present time Community ordinances are submitted to the Secretary of the Interior for review and

approval. We assume that the State and local authorities were aware of this when they endorsed the bill. An important due process question that should be confronted is the right to counsel. Title 25 U.S.C. §1302 provides in part: "No Indian tribe in exercising powers of self-government shall -- (6) deny to any person in a criminal proceeding the right. . . at his own expense to have the assistance of counsel for his defense." (Emphasis added.) The Court of Appeals for the Ninth Circuit has held that this provision does not entitle an Indian defendant to the assistance of appointed counsel and, further, that denial of appointed counsel to Indians in tribal court does not offend the Constitution. Tom v. Sutton, 533 F.2d 1101 (1976). This ruling would probably apply to non-Indians brought into tribal court under this legislation, see Oliphant v. Suquamish Indian Tribe, supra, 435 U.S., n 6 at pp. 195-96; id., at p. 211. If, however, this legislation is construed as delegating federal authority upon the Community, rather than as removing a restraint upon its exercise of tribal sovereignty, the ruling probably would not apply, see Scott v. Illinois, 440 U.S. 367, 373-374 (1979), which held that the Constitution mandates that counsel must be provided whenever a defendant is sentenced to imprisonment. We do not know whether the bar of the Pima-Maricopa Community Court will be able to provide such

services pro bono or whether the Community will be able to pay counsel fees or provide a public defender.

Section 1302(10) provides that a defendant charged with an offense punishable by imprisonment has the right to demand trial by a jury of not less than six persons. Again, the question arises whether the Community will be able to meet this burden.

Other questions of practice and procedure need to be considered. For example -

- It is anticipated that many of the arrests that will be made under this new legislation will involve intoxicated driving. Some consideration should be given to rules that will govern the administration of tests and the weight to be given them.

- A significant deterrent to drunken driving is the assignment of points and the suspension of licenses. Will prosecution in tribal court immunize the defendant from these consequences or will its judgments be given recognition by state motor vehicle bureaus? See, Harris v. Wyoming State Tax Commission, 718 P.2d 49 (Wyo. S. Ct. 1986) (Commission cannot rely upon tribal court conviction to suspend license).

- In developing its rules of evidence, is the court to look to federal or state sources for guidance? For example, state and federal law may differ on the admissibility of evidence.

- How will the Court obtain custody over non-residents whom it has released pending trial? How will it recover fines it imposes?

Finally, we note the absence of any appeal right. The only mechanism for obtaining review of a tribal court ruling is by petition for a writ of habeas corpus in federal district court. The scope of review in a habeas proceeding is exceedingly narrow, and might, moreover, be available only to review a sentence of imprisonment, but not to review a fine.

In closing I would like to emphasize again that we have no direct knowledge of the Salt River Pima - Maricopa Community Court and the manner in which it presently conducts its business. We have no way of judging whether the Court or the Community will be able to undertake and carry out the new responsibilities under the Act. Our support of this legislation derives entirely from the endorsements it has received from the Governor and Attorney General of Arizona and the mayors of the surrounding communities. We hope that they and the tribal authorities have given thought to the concerns we have raised in arriving at their endorsement.

We would also like to express our hope that applications for like authority on behalf of other tribes will be evaluated by the Congress against the special needs of the reservation, the capabilities and resources of the tribe, and the views of those who will be most directly affected.

PREPARED STATEMENT OF GERALD ANTON

I am Gerald Anton, President of the Salt River Pima-Maricopa Indian Community. On behalf of the Community and the Community Council, I wish to thank you for asking me here today to testify in support of S. 2564.

On July 26, 1983, the Salt River Pima-Maricopa Indian Community presented a memorandum to the members of the Arizona Congressional delegation regarding criminal jurisdiction over misdemeanor offenses by non-Indians within Indian country. The dialogue that the memorandum engendered led the Community to believe that such legislation ought to be addressed specifically to individual tribes in response to specific circumstances and in cooperation with neighboring non-Indian communities. S. 2564 deals solely with criminal jurisdiction within the Salt River Pima-Maricopa Indian Community.

The Salt River Pima-Maricopa Indian Community is located on the very edge of the Phoenix metropolitan area. It is bounded on three sides by the cities of Mesa, Tempe and Scottsdale. (Exhibit 1) The Community is in the midst of one of the most rapidly growing urban areas in this country. Across its roads and through its jurisdiction flow over 50,000 automobiles a day transporting residents of neighboring cities from one part of the Phoenix metropolitan area to another. On to Community lands come people from neighboring communities to take advantage of the opportunity for recreation that the desert and mountainous land,

and the flowing Salt River affords. With them come the small percentage of people that violate traffic laws and misdemeanor ordinances.

The Salt River Pima-Maricopa Indian Community has a long history of viable self-government. The Community maintains a Department of Public Safety which includes both a police force and a fire department. It maintains a court system which includes an elected Chief Judge as well as a Juvenile Judge and two part-time associate judges who are appointed for set terms. The judges are supported by probation officers and other court personnel. The history of the courts and of the police department reflects a justice system based on the principles of the Bill of Rights of the United States Constitution as contained in the Indian Civil Rights Act of 1968 and in the Bill of Rights of the Community's own Constitution.

During the period of time preceding the decision in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), the Salt River justice system worked without discrimination as between Indians and non-Indians, members and nonmembers.

The Community's police officers are trained in the Arizona State Academy and are state certified as peace officers within the State of Arizona. Indeed, they are today better equipped and better trained than ever before. The Community court is served by judges who receive the most sophisticated training available and who exercise the independent judgment which is the hallmark of a sound judicial system. The Community's Department of Public

Safety has regular professional contact with departments in surrounding communities and national law enforcement organizations. The courts and law enforcement personnel of the Salt River Pima-Maricopa Indian Community are well qualified to carry out what has always been thought of as a proper function of local government -- local law enforcement and adjudication.

The Salt River Pima-Maricopa Indian Community has neighbors who share its concerns. The problems of law enforcement affect Phoenix, Scottsdale, Tempe and Mesa as they affect our community. Those cities, our neighbors, stand with us in this effort and have endorsed the proposal before you. We have attached letters of support from the Mayors of each of the four cities. (Exhibits 2, 3, 4 and 5) They agree that the Salt River Indian Community should have local law enforcement and adjudicatory authority similar to that of the cities. As Mayor Brooks of Mesa wrote:

> "We feel strongly that your Community should have the same right to enforce and adjudicate various violations of your laws as we in Mesa and other neighboring cities do."

Law enforcement concerns not only our neighboring cities, but the county and the state. Tom Freestone, District One Member of the Maricopa County Board of Supervisors, has written a letter of support. (Exhibit 6)

Robert K. Corbin, Attorney General of Arizona, wrote to Senator Goldwater:

> ". . . in recognition of the need for effective law enforcement throughout the State of Arizona, I support the proposal." (Exhibit 7)

Governor Bruce Babbitt in his letter supports the concept put forward by the Salt River Pima-Maricopa Indian Community in S. 2564. (Exhibit 8)

The Salt River Pima-Maricopa Indian Community has always attempted to resolve problems through consultation and discussion. The Community and its neighboring cities, as well as state authorities, have had a long history of working problems out in constructive ways. Our neighbors have come to know how our community government functions and have come to respect its competency. Our relations with the offices of the Governor and the Attorney General in an ongoing effort to create a climate of understanding between us -- even where there remains disagreement in matters of policy -- have borne fruit in both greater understanding and cooperation as well as the willingness of those officials to recognize the practical benefits that will flow from the enactment of S. 2564.

The Salt River Pima-Maricopa Indian Community appears here with the full support of its neighboring cities and of the county and state officials whose offices are most involved with the issues dealt with by S. 2564. Arizona stands united on this. We ask you to enact S. 2564 and thereby ratify what is a local Arizona consensus.

PREPARED STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA

Mr. Chairman, Thank you for scheduling this hearing on S. 2564, the Salt River Pima-Maricopa Indian Community Jurisdiction bill. I welcome Mr. Gerald Anton, President of the Salt River Indian Community and other witnesses who have come here to testify on the importance of S. 2564.

This bill will grant to the Salt River Indian Community jurisdiction for criminal misdemeanors committed by non-members of the Community, whether Indian or non-Indian. Since the Supreme Court's decision in the Oliphant case, the administration of justice with respect to non-members on this reservation has been surrounded by great uncertainty. In Oliphant, the Court found that tribes do not have the inherent right to exercise criminal jurisdiction over non-Indians unless Congress affirmatively granted it such jurisdiction.

The Salt River situation is of particular concern because of the Community's close proximity to the large metropolitan area of Phoenix. Four different municipalities border the reservation. The municipal system of highways and streets carry some 80,000 people across the reservation on an average day. The reservation has a river which offers water recreation opportunities to the non-Indian community. All this leads to significant interaction between tribal members and the non-Indian community on the Salt River Community lands.

While on the whole this interaction is orderly, there are those incidents where non-members of the Community violate the criminal misdemeanor ordinances of the tribe. At present the efficient administration of justice with respect to these violations is hindered. The Salt River Community as the local government which is best able to deal with law enforcement within its territorial jurisdiction can not exercise its criminal jurisdiction in these cases. We need to grant it the jurisdiction so that violators can be prosecuted as efficiently as possible. By granting it the necessary jurisdiction, we are merely applying the same principle of general criminal jurisdiction as that which we have always applied to its municipal neighbors - deferring to and reinforcing the local government's power to prosecute violations of its laws.

The Supreme Court did not bar congressional delegation of criminal jurisdiction over non-Indians to tribes. It simply said unless Congress, in exercising its plenary powers over Indian tribes, affirmatively extended tribal jurisdiction over non-Indians, tribes could not exercise such jurisdiction. S. 2564 extends the Salt River Indian Community's criminal jurisdiction to cover non-members of the tribe.

The senior Senator from Arizona and I find that doing so serves the public interest in maintaining law and order. This is a public interest which is shared by the four city governments with the tribe. These cities and the State of Arizona support this extension. We are acting on the collective judgement and wisdom of our local governments. In their collective judgement, this bill will improve the administration of justice in the Phoenix metropolitan area. We are not setting a national policy which other states, cities or tribes must abide by. S. 2564 addresses only the situation involving the Salt River Indian Community and Phoenix metropolitan area in Arizona. It does so within the limits of the Supreme Court's decision in Oliphant v. Suquamish Tribe.

I know that concern has been expressed by the Justice Department about the Community court system's abililty to administer the additional responsibilities. Until 1978 when the Oliphant decision was rendered, the Community Court administered these responsiblities. In the eight years which have passed, the court has improved its system and if necessary could address the need for additional means of resolving possible violation of the rights of the defendents. I will explore these concerns in my questions today.

I must listen to what the local governments are saying about the need for this bill and urge my colleagues to do likewise.

PREPARED STATEMENT OF THE UNITED TOWNSHIP ASSOCIATION

United Township Association, formed within the boundries of the White Earth Indian Reservation, is summitting this testimony in opposition to S2564.

On June 17,1986 Senators Goldwater and DeConcini introduced S2564 that would confer upon the Salt River Pima Maricopa Indian Community criminal jurisdiction over non-tribal members within the reservations boundries.

If this bill is passed persons passing through the Salt River Reservation may find themselves in a situation that will be beyond comprehension. They will discover that their protections under the United States Bill of Rights have simply vanished, if taken into tribal court. Now their only rights are the rights afforded them by the Indian Civil Rights Act (ICRA) of 1968.. Congress did not include in the IRCA any provisions that would instruct the tribes to use Democratic Rights. They have created governments based on ancestry.

The Federal Courts avoid undue or intrusive interference in reviewing tribal court procedures. The structure and procedure of these courts are determined by the tribes themselves. The Writ of Habeas Corpus might apply when a person is held in custody. Other than that it is up to the tribal governments to apply and enforce the rights under the IRCA.

Not only would a person finding themselves in violation of the Salt River Indian Communities Criminal Ordinance be judged by a judge and or a jury that was not of their peers(jury trials are not a guaranteed right). They could not choose to have a voice in the government that controlled their lives. Most likely they have never seen or heard of the ICRA or ever dreamed that it would ever apply to them.

Our concern over this bill is not limited to what would happen on the Salt River Reservation. But of its impact on the tens of thousands of persons, that live on or near Indian Reservations across the United States.

Most reservations have been opened for settlement by Non-Indians. We have lived for generations on what the courts are now saying are Indian Reservations. Federal Indian law treats open and closed reservations the same. A bill or a court decision can affect both types of reservations equally. A good example is Oliphant vs. Suquamish. This case was brought to court concerning an open reservation, yet it affects both closed and open reservations.

There is a valid fear that this bill if passed will overturn the 1978 United States Supreme Courts decision on Oliphant. The Courts main reasoning for its decision was 'that for over a century Congress consistently believed that criminal jurisdiction of offences committed by Non-Indians within Indian Country laid in the Federal Courts.' This bill would give the courts

the signal that Congress is now willing to accept criminal jurisdiction by tribes over non-tribal members.

It is unconceivable that the tribal governments would ignore this chance to increase their powers. Residents on or near Indian Reservations will most likely find themselves in court as the tribes try to prove that this bill overturns Oliphant. As Senators Goldwater and DeConcini have used the decision on Oliphant as the reason for the need of this bill.

Both of the Senators offices believe that this bill was written clear enough to be limited to the Salt River Reservation. It is a mistake to believe you can limit Federal Indian Law especially when opening a new avenue of jurisdiction. Court decisions and Congressional Acts have a habit of having a far-reaching effect on all persons living on or near Indian Reservations.

We were told that both the State of Arizmia and the U.S. Justice Dept. were checked with on this bill. State and Federal government bureaucracies roles are to look out for State and Federal interest. That is the interest of the government, not necessarily the peoples rights. An example is that if the White Earth Band started taxing all people within White Earth,the Federal government and the State of Minnesota would not rush to our rescue. Even though we would be taxed by a government that we have no voice in, a violation of the basic principles of this country. They would not help us. It would not interferewith their legitimate interest. Which is their taxation of us. State and Federal interest and the rights of the people should be - the same, but saddly enough they are becoming increasingly separate.

Congress has the responsibility of protecting the rights of all people. It is obvious that this bill does not protect all people.Removing the protections of the Bill of Rights is a tragic step backwards.

For years persons affected by Federal Indian Policy have been defending themselves in court, as tribal governments began to exercise civil jurisdiction over them. We have an enormous feeling of helplessness and frustration as we see a bill introduced that will further the destruction of our freedoms.

We are wondering if anyone in this Democracy cares, what is happening to us. This lack of interest could be because it affects someone else. Or is it that we as a nation are smug because we are the United States. We stand for freedom. It would be hard to comprehend that we would justify diminishing our own peoples freedoms. But that is exactly what is happening!

To be able to deal with a problem you first need to fully understand that there is a problem. S2564 takes away our basic freedoms by placing non-tribal members under the criminal jurisdiction of a government in which they have no voice. The United States is a democracy. We as a free nation can not compromise the principles of Democracy within the boundries of the United States. In a democracy, the political control is shared by all the people. Congress can not seem to reconcile itself to the policy of supporting tribal self-government, self-determination and to the existance of our rights as citizens of the United States.

There is an urgent need for a thorough and articulate inspection of Federal Indian Policy from the perspective of how it has altered dramatically the Constitutional rights of citizens of the United States. It is up to

Congress and the Administration to act. You can add to this quagmire by passing this bill. Or you can take action and create a Congressional or Presidential Commission to investigate these increasingly overwhelming problems.

United Township Association reiterates it position, that we oppose S2564 and seek an investigation of Federal Indian Policy.
Thank you for the opportunity to summit this testimony.

Ann Schoenborn
Co-Chairperson
United Township Association
Rt2 Box 302
Waubun, Mn 56589

CITY OF PHOENIX

Terry Goddard, Mayor

February 21, 1986

Mr. Gerald Anton, President
Salt River Pima-Maricopa
Indian Community
Rt. 1, Box 216
Scottsdale, AZ 85256

Dear President Anton:

I have reviewed the proposed legislation that the Salt River Pima-Maricopa Indian Community will ask the Arizona congressional delegation to introduce in the Congress. The legislation would authorize the Salt River Pima-Maricopa Indian Community to enforce its laws in its court without regard to the race or residence of the offender. I heartily suport your proposal. The Salt River Pima-Maricopa Indian Community should have similar local law enforcement authority as is exercised by the City of Phoenix and other cities within this metropolitan area.

If you need any further assistance, do not hesitate to contact me.

Sincerely,

Terry Goddard
Mayor

TG:rd

EXHIBIT 2

CITY OF SCOTTSDALE
"The West's Most Western Town"
3939 Civic Center Plaza
SCOTTSDALE, ARIZONA 85251

Office of the Mayor and Council

Herbert R Drinkwater
MAYOR

March 6, 1986

The Honorable Gerald Antone, President
Salt River Pima Maricopa Indian Community
Route 1, Box 216
Scottsdale, Arizona 85256

Dear Gerald:

I have reviewed the legislative proposal that the Salt River Pima Maricopa Indian Community will ask the Arizona congressional delegation to introduce in the Congress. The legislation would authorize the Salt River Pima Maricopa Indian Community to enforce its laws in its court for offenses occurring within the Community without regard to the race or residence of the offender. I heartily support your proposal. The Salt River Pima Maricopa Indian Community should have local law enforcement authority similar to that exercised by the City of Scottsdale.

If you need any further assistance, do not hesitate to contact me.

Sincerely,

Herbert R. Drinkwater
Mayor

HRD/sr

EXHIBIT 3

All America city
TEMPE

WILLIAM J. BEAM, Vice Mayor
DON CASSANO, Councilman
PATRICIA A. HATTON, Councilman

WILLIAM J. LOPIANO, Councilman
ROWLAND G. OONK, Councilman
FRANK PLENCNER, Councilman

Office of the
Mayor and Council
HARRY E. MITCHELL
Mayor

February 27, 1986

Gerald Anton, President
Salt River Pima-Maricopa
Indian Community
Rt. 1, Box 216
Scottsdale, Arizona 85256

Dear President Anton:

I have reviewed the legislative proposal that the Salt River Pima-Maricopa Indian Community will ask the Arizona congressional delegation to introduce in the Congress. The legislation would authorize the Salt River Pima-Maricopa Indian Community to enforce its laws in its court for offenses occurring within the Community without regard to the race or residence of the offender. I heartily support your proposal. The Salt River Pima-Maricopa Indian Community should have local law enforcement authority similar to that exercised by the City of Tempe.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Harry E. Mitchell

Harry E. Mitchell
Mayor

djm

31 E. Fifth Street • P.O. Box 5002 • Tempe, Arizona 85281 • (602) 967-7...

EXHIBIT 4

CITY OF MESA
MESA, ARIZONA 85201

AL BROOKS
MAYOR

February 20, 1986

MR. GERALD ANTON, PRESIDENT
Salt River Pima-Maricopa Indian Community
Route 1, Box 216
Scottsdale, Arizona 85256

Dear President Anton:

As we have discussed in the past, the City of Mesa supports the Salt River Pima-Maricopa Indian Community's efforts to introduce legislation in the United States Congress that will give the Community the right to enforce local laws against any individual who violates them within your Community. We feel strongly that your Community should have the same right to enforce and adjudicate various violations of your laws as we in Mesa and other neighboring cities do.

We will be pleased to assist your Community in any way we can in your efforts to obtain federal legislation to allow this to occur.

Sincerely,

AL BROOKS
Mayor

AB:mw

EXHIBIT 5

OFFICE OF THE BOARD OF SUPERVISORS

MARICOPA COUNTY BOARD OF SUPERVISORS
602 County Administration Bldg. 1115 1st Ave., Phoenix, Arizona 85003

602 262 3416

May 22, 1986

The Honorable Gerald Anton
President, Salt River Pima-Maricopa
Indian Community
Route 1, Box 216
Scottsdale, AZ 85256

Dear President Anton:

I have reviewed the proposed legislation the Salt River Pima-Maricopa Indian Community has requested the Arizona Congressional Delegation to introduce to the U. S. Congress. I support your efforts to obtain local misdemeanor law enforcement authority similar to that granted to Maricopa County and the cities and towns within the Phoenix area.

I have checked with several community leaders who feel this step is long overdue. From their comments and my own observation, I believe that granting your community such authority would resolve many of the problems that currently occur when non-Indians are arrested for misdemeanors on Reservation lands.

If I can be of further help to you in this matter, please contact my office.

Sincerely,

Tom Freestone
Supervisor, District 1
Maricopa County Board of Supervisors

TF2:23:crq
cc: Richard Wilks

TOM FREESTONE District 1 | GEORGE I. CAMPBELL District 2 | FRED ROORY, JR. District 3 | CAROLE CARPENTER District 4 | ED PASTOR District 5

EXHIBIT 6

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007
Robert K. Corbin
(602) 255-4266

June 12, 1986

Hon. Barry M. Goldwater
363 Russell Office Building
Washington, D.C. 20510

Re: Salt River Pima-Maricopa Indian Reservation
Criminal Misdemeanor Jurisdiction

Dear Senator Goldwater:

I have reviewed your proposed draft of a bill dealing with the above subject and have conferred with members of my staff on it as well. It is my understanding that the bill is not intended to supplant or diminish otherwise continuing state jurisdiction over non-Indian misdemeanor crimes committed on the reservation, but recognizes that jurisdiction over such persons and crimes will continue to exist in both the state and federal courts to the same extent as at present.

It is also my understanding that in the remarks which may be placed into the Congressional Record regarding the bill, these matters will be addressed. I have enclosed for your consideration some proposed language in this regard and hope that it may be used.

With the foregoing points in mind, and in recognition of the need for effective law enforcement throughout the State of Arizona, I support the proposal.

Sincerely,

Bob

ROBERT K. CORBIN
Arizona Attorney General

RKC:kgh
Enclosure

8078h

EXHIBIT 7
Page 1 of 2

"The intent of the bill is not to supplant or diminish existing federal or state law, but to merely address, in a pratical manner, the implementation of tribal local law enforcement authority. The bill maintains the existing jurisdiction of the federal and state courts over misdemeanor violations of federal and state laws respectively."

BRUCE BABBITT
GOVERNOR

OFFICE OF THE GOVERNOR
STATE HOUSE
PHOENIX, ARIZONA 85007

IN REPLY
REFER TO

May 7, 1986

The Honorable Gerald Anton
President
Salt River Pima-Maricopa
Indian Community
Rt. 1, Box 216
Scottsdale, Arizona 85256

Dear President Anton:

I have reviewed the proposed legislation that the Salt River Pima-Maricopa Indian Community has asked the Arizona congressional delegation to introduce in the Congress. I support the concept of granting Indian governments local misdemeanor law enforcement authority similar to that exercised by Maricopa County and the cities within the Phoenix metropolitan area.

If you need further assistance, do not hesitate to contact me.

Sincerely,

Bruce Babbitt
Governor

BB:dps

EXHIBIT 8